

**UPTOWN PROPERTIES SDN BHD v. PENTADBIR TANAH
WILAYAH PERSEKUTUAN & ORS**

HIGH COURT MALAYA, KUALA LUMPUR
RAJA AHMAD MOHZANUDDIN SHAH JC
[CIVIL SUIT NO: S6-21-69-2006]
24 NOVEMBER 2023

Abstract – (i) In a dispute that arises from a land fraud, as a general rule of law, damages recoverable must be assessed at the date when the tort was committed, ie, the breach occurring at the time of the signing of a sale and purchase agreement; (ii) A claimant cannot claim market value of a land and then also demand damages for lost profits on the ground that the opportunity to develop the land is lost. There can only be one claim; (iii) An aggrieved party is entitled to some form of damages for the wrong that was committed against it, and for it to be placed in the same position as they would have been if the fraud had never occurred but at the same time unjust enrichment on its part ought to be avoided.

TORT: Negligence – Misstatement – Land fraud – Assessment of damages – Entitlement to claim for market value of land at time of signing sale and purchase agreement – Whether damages recoverable assessed at date when tort was committed – Whether claimant could claim for damages for lost profits – Whether there would be unjust enrichment – Whether claimant placed in same position as it would have been if fraud had not occurred – Imposition of interest from date of award of damages – Rules of Court 2012, O. 42 r. 12

The dispute arose from a land fraud that occurred during the computerisation exercise at the Federal Territory of Kuala Lumpur land office. As part of the modernisation of land administration, the first defendant was responsible for uploading land details into the computer system from a manual record to allow computerised titles to be issued as a result of the data transfer. However, a mistake was made affecting the plaintiff's land when the officer in charge entered the fourth defendant's name into the system instead of the plaintiffs. She mistakenly entered 'Liptown Properties Sdn Bhd' instead of 'Uptown Properties Sdn Bhd' when keying in the plaintiff's name. It turned out that Lipton Properties Sdn Bhd which was named as the fourth defendant did not exist. This error somehow reached the ears of the fraudster, who exploited it to obtain computerised title to the land in dispute. The fraudster then sold the property to the fifth defendant. Following the sale and purchase of the land in December 2004, the plaintiff, as the original owner, became aware of the fraudulent transaction, resulting in a complaint and caveat being registered. Meanwhile, in order to obtain financing for the land's purchase, the fifth defendant charged the land to the sixth defendant. The plaintiff filed a civil suit and following the trial, the High Court ordered the land to be returned to the plaintiff due to the negligence of the first defendant. Both the

- A fifth defendant, who was the immediate purchaser, and the sixth defendant, whose role was to finance the purchase, had taken out notices of contribution against the first, second and third defendants as a consequence of such negligence. The notices of contribution were granted by the High Court in favour of the fifth and sixth defendants against the first, second and third
- B defendants, with damages to be assessed by the Deputy Registrar. The Deputy Registrar then assessed damages between the parties. In regard to the Deputy Registrar's assessment of damages, the damages awarded to the fifth defendant were, *inter alia* (i) disallowing the claim for compensation for the loss of land at market value but granting nominal damages of RM2 million and denying the claim for loss of profit; (ii) allowing exemplary damages of
- C RM500,000 which accounted for 25% of the nominal damages awarded, as opposed to the sum of RM13 million claimed by the fifth defendant; (iii) allowing claim for stamp duty and legal fees for the SPA, MOT and loan documentation and; (iv) disallowing interest on damages. The fifth defendant
- D appealed against the entire assessment, while the first, second and third defendants appealed against the damages awarded of RM3,353,603.75 that they must pay to the fifth defendant. The fifth defendant argued that they were entitled to the entire amount of damages claimed in the sum of RM77,265,8883.75 instead of RM3,353,603.75 as awarded by the Deputy Registrar. On the other hand, the first, second and third defendants argued
- E that the fifth defendant was not entitled to anything.

Held (partially allowing both parties' notices of appeal):

- (1) The question of liability could not be reopened during the assessment of damages. The first, second and third defendants owed a duty of care to
- F the fifth and sixth defendants. However, the fifth defendant was only entitled to claim the market value of the land at the time of signing the SPA rather than the date of judgment after trial. As a general rule of law, damages recoverable must be assessed at the date when the tort was committed, which in this case was on 14 September 2004. (paras 12 & 20)
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- (2) It was not long before the fifth defendant became aware of the fraud. This was due to the fact that they knew or should have known from the moment the caveat was entered that the transaction was forged, particularly since the land was caveated by the first defendant. Here, the
- H fifth defendant was not tricked out of his property or land. It was apparent to the fifth defendant that the fraud had taken place when they bought the land in question. It could not therefore be based on the judgment date. It has to be the date when the fifth defendant was led to believe that the transaction was legitimate and valid. The extent to
- I which the fifth defendant was unaware of the fraud only lasted for that time period. In this instance, the fifth defendant was only the purchaser of the land. This was considered a tort of misstatement. Considering the government was held liable for the tort of misstatement, the breach occurred at the time of signing of the SPA. (paras 23 & 24)

- (3) This court was left with the obvious question of which valuation reports should be considered when determining the land's value in 2004. Based on analysis and balancing of the evidence as well as the overall circumstances of the facts relating to both appeals, this court was inclined towards the valuation report prepared by Firdaus & Associates dated 7 July 2004 for RM15 million, which represented a more reasonable and appropriate basis due to the fact that the fifth defendant must be placed in a position corresponding to what they would have been if the tort had not occurred. The fifth defendant had received no land since the fifth defendant had to convey it back to the plaintiff. It was therefore necessary to compensate the fifth defendant since the SPA could not be treated as a pointless exercise. (paras 25, 27 & 29) A B C
- (4) However, the fifth defendant could not claim the market value of the land of RM52 million and then also demand damages for lost of profits of RM11.4 million on the ground that the opportunity to develop the land was lost. There could be only one claim in this affair. As the fifth defendant had already claimed for the loss of value, it could not now claim for the loss of profit. In this regard, there were only two possible outcomes, either the land was sold or it was developed by the fifth defendant. In the specific circumstances of this case and the manner in which the fifth defendant was claiming, it was not possible to claim both damages concurrently. Furthermore, the idea of selling and redeveloping the land once again was too remote. If the fifth defendant was allowed to claim as such, the recovery would be double, aside from the fact that it would also be unjust enrichment on its part. (para 30) D E
- (5) The fifth defendant was entitled to some form of damages for the wrong that was committed against it. The calculation of the damages payable to the fifth defendant as opposed to the award of the Deputy Registrar were; (i) loss of value of the land at the time the tort was committed against the fifth defendant: RM15,000,000; (ii) stamp duty: RM354,000; (iii) legal fees (SPA & MOT): RM46,000; (iv) legal fees (loan documentation): RM99,603.75; (v) as a final step, all the above added amounts were to be deducted from the amount paid to the sixth defendant: RM12,286,761.07. Therefore, the total of damages payable by the first, second and third defendants to the fifth defendant was RM3,212,842.68. No exemplary damages were awarded since none of the first, second and third defendants' conducts were outrageous enough to warrant punishment by way of exemplary damages. Further, even though the fifth defendant was not entitled to buy a new piece of land in 2012, they had nevertheless been sufficiently compensated for the profit of RM3 million, as awarded. It was an over-the-air profit that did not require any new land to be developed. As a result, the fifth defendant had been placed in the same position as they would have been if the fraud had never occurred. (paras 31-36) F G H I

- A (6) As for the imposition of interest from the date of the award of damages by the Deputy Registrar on 15 October 2021, this was the point at which the precise amount of damages became apparent. This was further supported by the fact that when the trial judge had allowed the fifth defendant's notice of contribution, the questions of the damages recoverable and their remoteness were still uncertain until the Deputy Registrar delivered the assessment award. Therefore, the award date was taken to be the date from which interest would be imposed according to O. 42 r. 12 of the Rules of Court 2012. (para 37)
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Case(s) referred to:

- C *Datuk Jagindar Singh & Ors v. Tara Rajaratnam* [1985] CLJU 157; [1985] 1 LNS 157 PC (*refd*)
Maju Holdings Sdn Bhd v. Fortune Wealth (H-K) Ltd & Other Appeals [2004] 4 CLJ 282 CA (*refd*)
Uptown Properties Sdn Bhd v. Pentadbir Tanah Wilayah Persekutuan & Ors [2012] 3 CLJ 271 HC (*refd*)
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Legislation referred to:

Rules of Court 2012, O. 42 r. 12

For the 1st-3rd defendants - Liew Horng Bin; SFC

For the 5th defendant - Goik Kenwayne & H'ng Yen Jun; M/s Dennis Nik & Wong

- E *Reported by Suhainah Wahiduddin*

JUDGMENT

Raja Ahmad Mohzanuddin Shah JC:

- F **Preliminary**

[1] As a result of the learned Deputy Registrar's assessment of damages, two appeals have been filed. The fifth defendant is appealing against the entire assessment, while the first, second and third defendants are appealing against the damages award of RM3,353,603.75 that they must pay to the fifth defendant.

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[2] The fifth defendant argues that they are entitled to the entire amount of damages claimed in the sum of RM77,265.883.75 instead of RM3,353,603.75 as awarded by the learned Deputy Registrar. On the other hand, the first, second and third defendants argue that the fifth defendant is not entitled to anything.

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An Overview Of The Facts Of The Case

[3] Here are some facts that led to these appeals.

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[4] The dispute arose from a land fraud that occurred during the computerisation exercise at the Federal Territory of Kuala Lumpur land office. As part of the modernisation of land administration, the first defendant was responsible for uploading land details into the computer system from a manual record. This was done to allow computerised titles to be issued as a result of the data transfer. However, a mistake was made affecting the plaintiff's land when the officer in charge entered the fourth defendant's name into the system instead of the plaintiffs. She mistakenly entered 'Uptown Properties Sdn Bhd' instead of 'Uptown Properties Sdn Bhd' when keying in the plaintiff's name. This error was allegedly caused by confusion between the words "U" and "L" at the beginning of the plaintiff's name. It turned out that Liptown Properties Sdn Bhd, which was named as the fourth defendant, did not exist.

[5] This error somehow reached the ears of the fraudster, who exploited it to obtain computerised title to the land in dispute. The fraudster then sold the property to the fifth defendant. Following the sale and purchase of the land in December 2004, the plaintiff, as the original owner, became aware of the fraudulent transaction, resulting in a complaint and caveat being registered. Meanwhile, in order to obtain financing for the land's purchase, the fifth defendant charged the land to the sixth defendant.

[6] The plaintiff then filed this civil suit in 2005. Following the trial at the High Court, Dr Prasad Sandosham Abraham J (as His Lordship then was) ordered the land to be returned to the plaintiff. This was due to the negligence of the first defendant. Both the fifth defendant, who was the immediate purchaser, and the sixth defendant, whose role was to finance the purchase, had taken out notices of contribution against the first, second and third defendants as a consequence of such negligence. The notices of contribution were granted by the High Court in favour of the fifth and sixth defendants against the first, second and third defendants, with damages to be assessed by the learned Deputy Registrar. On appeal, the first, second and third defendants were unsuccessful, as was the application for leave to appeal to the Federal Court. The learned Deputy Registrar then assessed damages between the parties, resulting in these appeals.

[7] Consequently, these appeals against the learned Deputy Registrar's assessment of damages only relate to the fifth defendant on one side and the first, second and third defendants on the other. In reference to the sixth defendant, the first, second and third defendants had duly paid them RM12,286,761.07 under such notice of contribution. Therefore, there is no pending issue as regards the sixth defendant.

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- A [8] In regard to the learned Deputy Registrar's assessment of damages, here are the damages Her Honour awarded to the fifth defendant:

	(a) Nominal Damages	RM2,000,000.00
	(b) Exemplary Damages	RM500,000.00
B	(c) Stamp Duty fees	RM354,000.00
	(d) Legal Fees (SPA and Memorandum of Transfer - MOT)	RM400,000.00
	(e) Legal Fees(Loan Documentation)	RM99,603.75
C	Total	RM3,353,603.75

- D [9] As outlined in the award, the learned Deputy Registrar disallowed the claim for compensation for the loss of land at market value but granted nominal damages of RM2 million. The claim for loss of profit was denied as well. Her Honour, however, allowed exemplary damages of RM500,000 which accounted for 25% of the nominal damages awarded, as opposed to the sum of RM13 million claimed by the fifth defendant. The fifth defendant was also allowed to claim stamp duty and legal fees for the SPA, MOT and loan documentation. The learned Deputy Registrar, nevertheless, decided not to allow interest on damages.
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Court's Analysis And Findings

- F [10] For a better understanding of both counsel's arguments, it is necessary to examine how the learned High Court Judge decided when allowing the fifth defendant's notice of contribution against the first, second and third defendants. In this regard, it is helpful to refer to His Lordship's grounds of judgment, duly reported as *Uptown Properties Sdn Bhd v. Pentadbir Tanah Wilayah Persekutuan & Ors* [2012] 3 CLJ 271. This is what His Lordship found concerning this issue:

- G [30] In my judgment, administrative short comings amounting to negligence and breach of duty cannot justify the plaintiff being dispossessed of its interest in the said land and the fact that it has happened is a violation of the plaintiffs constitutional right under art. 13 of the Federal Constitution.
- H [31] Perhaps in the current climate of the administration of the country and the transformation policy and reforms being carried out by the government, I would be prepared to say that the 1st defendant owed a duty of care to ensure that by its own mistakes and negligence, the rights of the plaintiff enshrined in art. 13 of the Federal Constitution are not rendered nugatory. This court cannot sit back and allow the plaintiff to be deprived of its land. If not checked a landowner who takes comfort in the document of title he holds, could have his rights be taken away from him "nilly willy".
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[32] In the light of my finding, I am of the view there was no necessity to deal with the question of *bona fide* purchaser for value.

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[33] On that basis I allowed the notice of contribution for the 5th & 6th defendants against the 1st, 2nd & 3rd defendants with damages to be assessed by the Timbalan Pendaftar. It must be shown that the breach of duty of the 1st, 2nd & 3rd defendants owed to the 5th & 6th defendants was the foreseeable cause and causally by itself caused the damages suffered particularly by the 6th defendant. The whole transaction would have to be examined carefully and its short comings particularly the Suruhanjaya Syarikat Malaysia (SSM) in registering a nonexistent company in its registry and the role of the solicitors in this transaction.

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[11] Based on the examination of the learned trial judge's decision, the following is my understanding of His Lordship's findings. His Lordship had allowed the fifth and sixth defendants' notices of contribution against the first, second and third defendants with damages to be assessed. For the purpose of assessing damages, proof must be provided in terms of the type or head of damages, followed by the quantum of damages. This aspect of His Lordship's decision is not indicative of the need that the issue of merits should be revisited again, more so at the assessment stage before the learned Deputy Registrar. Therefore, when it comes to liability, there is no revisiting of the merits issue. This was a matter for the learned trial judge to determine.

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[12] Taking this perspective into account, a merits analysis now needs only to be conducted to determine whether damages were actually suffered, and, if so, their quantum. As the learned trial judge had already determined, the first, second and third defendants did owe a duty of care to the fifth and sixth defendants. It was also made clear by the learned trial judge that there was no necessity to deal with the issue of a *bona fide* purchaser for value. There should be no doubt about those findings by now.

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[13] The only point in which I agree with learned Senior Federal Counsel is that the learned trial judge has yet to decide on the head of damages recoverable and the question of remoteness as well as contributory and apportionment related specifically to damages. However, I cannot agree with the approach taken by learned Senior Federal Counsel when he argues at length on the merits of liability, which should have been resolved by now and should no longer be a concern, especially when the issues have been ventilated at trial up to the point where leave to appeal to the Federal Court had been refused.

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[14] This specific issue is therefore no longer paramount when assessing damages. Therefore, when learned Senior Federal Counsel argues on the issue of unconscionable conduct on the part of the fifth defendant, learned Senior Federal Counsel is encroaching on the question of the fifth defendant's position as a *bona fide* purchaser for value and on the merits of the case. This is particularly true when learned Senior Federal Counsel argues that if the court agrees with him, the fifth defendant will not be able to recover any loss or damages. It is evident from learned Senior Federal Counsel's arguments

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- A that he is attacking again the issue of forgery by pointing out the bizarreness of the disbursement of the loan as well as the evidence during the trial that appeared to have involved the element of fraud with tell-tale signs of active participation in or knowledge of the fraud, which, according to learned Senior Federal Counsel, remains inexplicable and unanswered by the fifth defendant.
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[15] Concerning this particular issue, the Court of Appeal had the opportunity to address the point that the question of liability cannot be reopened during the assessment of damages. In *Maju Holdings Sdn Bhd v. Fortune Wealth (H-K) Ltd & Other Appeals* [2004] 4 CLJ 282; [2004] 1 MLRA 832, Abdul Kadir Sulaiman JCA (as His Lordship then was) made the following observations at p. 297 (CLJ); p. 842 (MLJ):

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- [28] The trial judge had rightly entered interlocutory judgment in favour of Regalion Investments Limited, the respondent in Civil Appeal No: W-02-964-2001 and also ordered that the senior assistant registrar or the deputy registrar of the High Court to proceed to formally assess the general damages and/or other ancillary relief as prayed for by the respondent. Since interlocutory judgment has been entered the question of liability of the appellant to Regalion Investments Limited has been conclusively determined with finality and therefore the issue of liability of the appellant cannot be re-opened or re-agitated by the appellant during the assessment of damages. The duty of the senior assistant registrar or deputy registrar of the High Court is strictly confined to assess the quantum of damages that is payable by the appellant to Regalion Investments Limited. This is strictly a mathematical exercise involving the calculation of the total option price of the option shares and deducting the value of the force sold shares, if any.
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[16] As a final note on this issue, it also appears to me that these submissions of learned Senior Federal Counsel constitute *res judicata*.

- [17] The next step is to determine whether the fifth defendant is entitled to the damages asked for and, if so, what quantum of damages it should receive.
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- [18] After reviewing the learned Deputy Registrar's grounds of judgment, Her Honour concluded that the fifth defendant had failed to prove that they were entitled to claim for the loss of land at market value. Furthermore, Her Honour found that the fifth defendant's claim was based on unjust enrichment and double recovery against the first, second and third defendants. The fifth defendant was nevertheless subsequently awarded nominal damages of RM2 million under the general principle of damages.
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- [19] Bringing my attention back to the appeals before me, the fifth defendant argues that it is entitled to the market value of the land as of 31 January 2012. This is the date the learned trial judge rendered His Lordship's judgment. Meanwhile, the first, second and third defendants argue that even if the fifth defendant is entitled to claim under this head of
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damages, the fifth defendant can only claim based on the value of the lost land that should have been determined on 14 September 2004 being the date the fifth defendant and the fourth defendant signed the sale and purchase agreement (“SPA”).

[20] In this regard, I am of the considered view that the fifth defendant is only entitled to claim the market value of the land at the time of signing the SPA rather than the date of judgment after trial. As a general rule of law, I agree that damages recoverable must be assessed at the date when the tort was committed, which in this case was on 14 September 2004.

[21] In *Datuk Jagindar Singh & Ors v. Tara Rajaratnam* [1985] CLJU 157; [1985] 1 LNS 157; [1985] 1 MLRA 479, the Privy Council, through the judgment of Lord Keith of Kinkel at pp. 492 & 493, held that damages are generally assessed at the time the tort was committed unless certain exceptions apply that require damages to be calculated up to the date of trial:

It was further argued for these appellants that Abdul Razak J was wrong to include in the damages any sum in respect of the increment in value which he held would have accrued to the land, had the appellant not been wrongfully deprived of it, between the date of the deprivation and the date of judgment, and in any event that the increment of 140% had no evidential basis and was unjustified. No doubt it is a general rule of law that the damages recoverable for a tort are to be assessed as at the date the tort was committed. But there are many exceptions to that rule, the most notable perhaps being the case of damages for personal injuries caused by negligence, which are assessed so as to take into account all loss suffered up to the date of trial having regard to the value of money at that time. The true test is what is just and reasonable in all the circumstances. The object of damages for the tort of deceit, as for other torts, is to put the injured party into as good a position financially as he would have been in if the tort had not been committed. In the present case there is no reason to doubt that if the respondent had not been tricked out of her land she would at the date of judgment still have been in ownership and possession of it bearing the value which in ordinary course it would have borne at that time. Further, if these appellants had not succeeded in bringing it about that the land was sub-divided into 70 lots and sold off to *bona fide* purchasers for value, the respondent would have been entitled to have the transaction with her set aside and to recover the land itself on the date that judgment was pronounced. So in their Lordships’ opinion the learned trial judge was right in principle to take into account in the assessment of damages the value which the land, if the respondent had not been deprived of it, would have borne at the date of judgment. Special considerations might have arisen if the respondent had been guilty of unreasonable delay in prosecuting her claim, but no suggestion of that has been made.

[22] In light of *Datuk Jagindar Singh & Ors v. Tara Rajaratnam* [1985] CLJU 157; [1985] 1 LNS 157; [1985] 1 MLRA 479, I do not find any exception to the general rule of law defined in that case applicable here in order to

A justify the value at the time of judgment. In my opinion, I am obligated to deliver justice to those who were wronged and the wrong occurred on 14 September 2004.

[23] Here are the reasons why I draw this conclusion. In this case, it was not long before the fifth defendant became aware of the fraud. This is due to the fact that they knew or should have known from the moment the caveat was entered that the transaction was forged, particularly since the land was caveated by the first defendant. It is undeniable that due to the ongoing dispute over the land, the fifth defendant put off the pursuit of the development order. The obvious is that ever since the dispute started, the registrar's caveat had already been entered over the property.

[24] Here, the fifth defendant was not tricked out of his property or land. If such a scenario were to occur, it would logically rob the innocent landowner of his right to retain the land for a long time and the ability to sell the land at a high price when the market price is high. The appeals before me, however, are quite the opposite. In this case, it was almost immediately apparent to the fifth defendant that the fraud had taken place when they bought the land in question. This means that it cannot be based on the judgment date. It has to be the date when the fifth defendant was led to believe that the transaction was legitimate and valid. The extent to which the fifth defendant was unaware of the fraud only lasted for that time period. In this instance, the fifth defendant was only the purchaser of the land. Referring back to my illustration, in the former scenario, it would be considered deceitful, whereas in our case, it would be considered a tort of misstatement. Considering the government was held liable for the tort of misstatement, I find that the breach occurred at the time of signing the SPA.

[25] After having reached such a conclusion about the exact timing of the assessment of the land value, I am left with the obvious question of which valuation reports should I consider when determining the land's value in 2004. There appear to be four valuation reports that were made post-judgment. Firdaus & Associates prepared a valuation report dated 22 May 2012 for the value of RM70 million, followed by Raine & Horn's valuation report dated 25 November 2013 for RM62.5 million. They were both made for the fifth defendant. Following that, the valuation and property services department (JPPH) prepared its rebuttal valuation reports dated 27 January 2017 and 10 June 2015 confirming that the market value of the land as at 31 January 2012 was RM21.5 million. Having this issue at the forefront of my mind, I must decide whether to rely on any of the valuation reports or hold that the fifth defendant has failed to prove their losses.

[26] While conducting this exercise, I became aware that there was a valuation report dated 7 July 2004 prepared by Firdaus & Associates for RM15 million regarding the same plot of land back then. This valuation was prepared to determine the value of the land for the parties to enter into the SPA. This information was derived from the submissions of learned Senior

Federal Counsel. In this instance, learned Senior Federal Counsel argues, alternatively, that even if the court finds in favour of the fifth defendant, the valuation ought to be based on 14 September 2004, the date when the SPA was signed. Learned Senior Federal Counsel further compares the whole valuation and pricing records provided to the parties at the time of the SPA. They were the valuation report dated 7 July 2004 by Firdaus & Associates in the amount of RM15 million, the valuation report dated 14 September 2004 of RM9,265,000 by JPPH, loan offer of RM10.5 million made by the sixth defendant against the said land as collateral and the selling price of RM12 million agreed upon between the fifth defendant and the fourth defendant (out of this, RM7.5 million was actually paid by the fifth defendant to the fourth defendant after deducting RM4.5 million paid to the broker). Those documents were presented to the court as evidence. Taking this matter further, as I analyse the fifth defendant's position, I must keep in mind that there has to be some kind of profit for them being the innocent party as a result of this entire episode.

[27] Based on my analysis and balancing of the evidence before me as well as the overall circumstances of the facts relating to both appeals, I have come to such an inclination towards the valuation report prepared by Firdaus & Associates dated 7 July 2004 for RM15 million. Taking this into consideration, I observe that JPPH's value appears to be the lowest among all the quantum figures available in 2004. It is, however, an amount that I do not accept, as at the end of the negotiations between the fourth defendant and the fifth defendant, RM12 million was ultimately agreed upon by both parties. Due to this, the sum of RM9,265,000 as valued by JPPH does not represent the correct value on which the parties agreed when completing the SPA. As I compare both valuation reports prepared by JPPH and Firdaus & Associates, I am of the opinion that the valuation report by Firdaus & Associates represents a more reasonable and appropriate basis due to the fact that the fifth defendant must be placed in a position corresponding to what they would have been if the tort had not occurred. Moreover, the fifth defendant appears to have only relied on valuation reports that were made in 2012 and 2013. Having said that, it is important to note that this approach is derived from the specific circumstances of the positions taken by the parties and the facts of the appeals before me, as I have just mentioned, including the alternative arguments by learned Senior Federal Counsel who put an option between the Firdaus & Associates and JPPH valuation reports both of which were prepared in 2004. It goes without saying that learned Senior Federal Counsel prefers the JPPH's valuation report.

[28] Continuing with the same issue, I respectfully disagree with the learned Deputy Registrar's findings that despite the fifth defendant's failure to prove damages, Her Honour nonetheless proceeded to award nominal damages of RM2 million. As seen from my perspective, the appeals before me do not appear to be such a case where the fifth defendant failed to prove damages or where there was no evidence for the court to consider. It is

- A unavoidable that the fifth defendant suffered losses as a result of this whole affair. As far as this issue is concerned, I have a number of valuation reports, not only the ones from 2004 but also those from 2012 and 2013 demonstrating the quantum of losses. Firdaus & Associates prepared a report dated 22 May 2012 for the value of RM70 million, Raine & Horn for the value of RM62.5 million on 25 November 2013 and JPPH for the amount of RM21.5 million reflecting the value as at 31 January 2012. With these figures in hand, I am now in a better position to make a more informed decision. Consequently, this led me to compare the quantum figures and arrive at the most reasonable and acceptable amount, based on my own assessment. Moreover, since I do not use the date of the judgment as a basis for determining the value, I have figures from 2004 to refer to.

- [29] The following issue also comes to mind. As argued by learned Senior Federal Counsel, the fifth defendant received the land free of charge since the first, second and third defendants had already paid the sixth defendant. However, as I understand it this is not the case as the fifth defendant received no land since the fifth defendant had to convey it back to the plaintiff. It is therefore necessary to compensate the fifth defendant since the SPA cannot be treated as a pointless exercise.

- [30] There is another issue I need to address. The fifth defendant cannot claim the market value of the land of RM52 million and then also demand damages for lost profits of RM11.4 million on the ground that the opportunity to develop the land was lost. It is my finding that there can be only one claim in this affair. As the fifth defendant has already claimed for the loss of value, it cannot now claim for the loss of profit. In this regard, there are only two possible outcomes, either the land is sold or it is developed by the fifth defendant. In the specific circumstances of this case and the manner in which the fifth defendant is claiming, it is not possible to claim both damages concurrently. Furthermore, the idea of selling and redeveloping the land once again is too remote. If the fifth defendant is allowed to claim as such, the recovery would be double, aside from the fact that it would also be unjust enrichment on its part.

- [31] In light of the whole analysis above, I conclude that the fifth defendant is entitled to some form of damages for the wrong that was committed against it. To this end, my calculation of the damages payable to the fifth defendant is as follows as opposed to the award of the learned Deputy Registrar:

- (i) loss of value of the land at the time the tort was committed against the fifth defendant: RM15,000,000;
- (ii) stamp duty: RM354,000;
- (iii) legal fees (SPA & MOT): RM46,000;
- (iv) legal fees (loan documentation): RM99,603.75;

- (v) as a final step, all the above added amounts are to be deducted from the amount paid to the sixth defendant: RM12,286,761.07; and A
- (vi) interest at the rate of 5% per annum from the date of judgment by the learned Deputy Registrar on 15 October 2021 until the date of full realisation. B

[32] Therefore, the total of damages payable by the first, second and third defendants to the fifth defendant is RM3,212,842.68:

$$\text{RM15,499,603.75} - \text{RM12,286,761.07} = \text{RM3,212,842.68}$$

[33] In continuation of this issue and based upon my analysis of the facts leading to the act of forgery, I am not in a position to award exemplary damages since none of the first, second and third defendants' conducts were outrageous enough to warrant punishment by way of exemplary damages. C

[34] Additionally, I find that the stamp duty amount of RM354,000 as claimed by the fifth defendant is justified due to the fact that it was incurred by the fifth defendant. D

[35] Further, I find that all the legal fees to be reasonable and based my decision on the invoices issued by Messrs Megat Najmuddin Leong & Co as legal fees were payments that had to be incurred in such transactions. However, I have deducted the stamp duty amount of RM354,000 from the legal fees for the SPA & MOT since it has already been awarded as a separate head of damages. E

[36] In this regard, it seems to me that even though the fifth defendant is not entitled to buy a new piece of land in 2012, I find that they have nevertheless been sufficiently compensated for the profit of RM3 million as awarded. It is an over-the-air profit that does not require any new land to be developed. As a result, the fifth defendant has been placed in the same position as they would have been if the fraud had never occurred. (See [1985] CLJU 157; [1985] 1 LNS 157; [1985] 1 MLRA479). F

[37] As for the imposition of interest from the date of the award of damages by the learned Deputy Registrar on 15 October 2021, I find that this is the point at which the precise amount of damages becomes apparent. This is further supported by the fact that when the learned trial judge allowed the fifth defendant's notice of contribution, the questions of the damages recoverable and their remoteness were still uncertain until the learned Deputy Registrar delivered the assessment award. Therefore, I take the award date to be the date from which interest will be imposed according to O. 42 r. 12 of the Rules of Court 2012. G

Conclusion

[38] As a result of the findings above, I am in effect partially allowing both parties' notices of appeal. Each party, therefore, bears its own costs. H

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